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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SCOTT BORISON,	)	
	)	
PLAINTIFF,	)	NO. C-15-3775 YGR
	)	
VS.	)	MONDAY, DECEMBER 7, 2015
	)	
PURCO FLEET SERVICES, INC.,	)	OAKLAND, CALIFORNIA
	)	
	)	INITIAL CASE MANAGEMENT
	)	
DEFENDANT.	)	
_____	)	

**BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE**

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**FOR PLAINTIFF:** LAW OFFICES OF PAUL H. NATHAN  
540 PACIFIC AVENUE  
SAN FRANCISCO, CALIFORNIA 94133  
BY: PAUL H. NATHAN, ESQUIRE

**FOR DEFENDANT:** CHRISTIANSEN LAW, PLLC  
311 S. STATE STREET, STE. 250  
SALT LAKE CITY, UTAH 84111  
BY: STEPHEN CHRISTIANSEN, ESQUIRE

**REPORTED BY:** DIANE E. SKILLMAN, CSR 4909, RPR, FCRR  
OFFICIAL COURT REPORTER

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 MONDAY, DECEMBER 7, 2015

2:51 P.M.

2 P R O C E E D I N G S

3 **THE CLERK:** WE WILL DO BORISON VERSUS PURCO FLEET.  
4 CALLING CIVIL ACTION 15-3775 BORISON VERSUS PURCO FLEET  
5 SERVICES.

6 COUNSEL, PLEASE STATE YOUR APPEARANCES.

7 **MR. NATHAN:** GOOD AFTERNOON, YOUR HONOR. PAUL NATHAN  
8 FOR THE PLAINTIFF, SCOTT BORISON.

9 **MR. CHRISTIANSEN:** GOOD AFTERNOON, YOUR HONOR.  
10 STEPHEN CHRISTIANSEN ON BEHALF OF DEFENDANT, PURCO FLEET  
11 SERVICES, INC.

12 **THE COURT:** \$423.40; THAT'S WHY WE'RE HERE.

13 **MR. NATHAN:** WE ARE HERE BECAUSE OF THE FAIR DEC --  
14 THE FEDERAL FAIR DEC CONSUMER PROTECTION ACT.

15 **THE COURT:** TELL ME HOW IS IT THAT THIS PARTICULAR  
16 PLAINTIFF SUFFERED PHYSICAL AND EMOTIONAL ENERGY, INCLUDING  
17 EMOTIONAL DISTRESS, INCLUDING ANXIETY, DIARRHEA,  
18 SLEEPLESSNESS, FRUSTRATION, DEPRESSION, HEADACHES,  
19 STOMACHACHES, CRYING SPELLS, HUMILIATION, ANGER, NERVOUSNESS,  
20 AND FAMILY STRIFE OVER \$423.40.

21 **MR. NATHAN:** YOUR HONOR, THAT'S WHAT DISCOVERY IS  
22 FOR. BUT I CAN TELL YOU -- I MEAN, I HAVE HANDLED ANOTHER ONE  
23 OF THESE CASES WHERE IT WAS OVER \$700.

24 **THE COURT:** YOU HAVE RULE 11 OBLIGATIONS. YOU TELL  
25 ME HOW IT IS YOU CAN PUT THIS IN A STATEMENT IN GOOD FAITH

1 WITH A STRAIGHT FACE TO ME. TELL ME. WHAT IS IT YOU KNOW  
2 ABOUT THIS PLAINTIFF THAT SUBSTANTIATES YOUR ABILITY TO WRITE  
3 THIS IN A STATEMENT.

4 **MR. NATHAN:** THIS IS WHAT MY CLIENT HAS TOLD ME. I  
5 DON'T WANT TO GO INTO ATTORNEY-CLIENT PRIVILEGE, BUT --

6 **THE COURT:** HE'S GOING TO BE DEPOSED.

7 **MR. NATHAN:** YET. HE WILL BE DEPOSED.

8 **THE COURT:** SO WHAT IS IT? REALLY? HE -- ALL OF  
9 THIS HAPPENED BECAUSE HE HAD A FLAT TIRE ON A CAR?

10 **MR. NATHAN:** NO. IT DIDN'T HAPPEN BECAUSE OF A FLAT  
11 TIRE. IT HAPPENED BECAUSE THE DEFENDANT WAS TOTALLY ILLEGAL  
12 IN THE WAY THEY TRIED TO COLLECT ON AN ALLEGED DEBT HE DIDN'T  
13 OWE AND THEY ARE NOT EVEN SUPPOSED TO PURSUE.

14 **THE COURT:** HOW DO YOU KNOW THE PLAINTIFF?

15 **MR. NATHAN:** HOW DO I KNOW THE PLAINTIFF? THE  
16 PLAINTIFF IS A FRIEND OF MINE AND A COLLEAGUE AND A WELL  
17 RESPECTED COLLEAGUE IN THE LEGAL PROFESSION.

18 **THE COURT:** SO IT'S A LAWYER?

19 **MR. NATHAN:** YES.

20 **THE COURT:** AND THIS LAWYER HAS -- IS ADMITTED TO  
21 PRACTICE WHERE?

22 **MR. NATHAN:** IN THE STATE OF CALIFORNIA. AMONG OTHER  
23 STATES, I'M SURE.

24 **THE COURT:** WHAT DISCOVERY ARE YOU GOING TO NEED?

25 **MR. NATHAN:** I WOULD LIKE TO HAVE AT LEAST ONE SET OF

1 WRITTEN INTERROGATORIES, WHICH WILL PROBABLY -- THEY MIGHT  
2 STEM ANOTHER ONE. DEPENDING ON THE PUNITIVE DAMAGES --

3 **THE COURT:** PUNITIVE DAMAGES?

4 **MR. NATHAN:** YOUR HONOR, THE FDCPA OUTLAWS THE  
5 CONDUCT THAT THE DEFENDANT ENGAGED IN.

6 **THE COURT:** WELL, ACTUALLY WE ARE NOT EVEN SURE IT  
7 APPLIES, RIGHT? I STILL HAVE A 12(B)(6) MOTION ON FILE.

8 **MR. NATHAN:** SO THAT WAS GOING TO BE MY QUESTION. DO  
9 YOU WANT US TO CONTINUE WITH DISCLOSURES AND DISCOVERY WHILE  
10 THE 12(B)(6) --

11 **THE COURT:** OVER \$423? YEP, I SURE DO.

12 **MR. NATHAN:** OKAY.

13 **THE COURT:** AND YOU'RE GOING TO HAVE A TRIAL DATE IN  
14 ABOUT FOUR OR FIVE MONTHS. WE ARE NOT GOING TO SIT AROUND ON  
15 THIS THING. SO YOU BETTER ALL MOVE PRETTY QUICKLY ON THIS.

16 IT WILL BE INTERESTING TO SEE THAT LAWYER TALK ABOUT ALL  
17 OF THAT.

18 MR. CHRISTIANSEN, DID YOU READ THIS *CLEARY VERSUS HERTZ*  
19 *RENT-A-CAR* OPINION FROM THE EASTERN DISTRICT OF PENNSYLVANIA?

20 **MR. CHRISTIANSEN:** YES. I WAS INVOLVED IN THAT CASE,  
21 YOUR HONOR.

22 **THE COURT:** WHY WOULDN'T I DO WHAT THAT JUDGE DID?

23 **MR. CHRISTIANSEN:** YOUR HONOR, IN THIS CASE, BECAUSE  
24 OF THE ALLEGATIONS AND THE WAY THAT THEY HAVE BEEN FRAMED,  
25 EVERYTHING THAT THE COURT NEEDS TO BE ABLE TO DISPOSE OF THIS

1 CASE ON A THRESHOLD BASIS IS BEFORE THE COURT.

2 **THE COURT:** HOW IS THAT CASE DIFFERENT? SOUNDS  
3 PRETTY SIMILAR BASED UPON THE OPINION THAT WAS ISSUED.

4 **MR. CHRISTIANSEN:** ONE OF THE CONCERNS THAT THE JUDGE  
5 HAD IN THE EASTERN DISTRICT OF PENNSYLVANIA WAS THAT THE  
6 MATERIALS WERE NOT BEFORE THE COURT.

7 IN THIS CASE, MR. BORISON HAS PLEADED SPECIFICALLY A  
8 LETTER, AND THAT IS PART OF WHAT HAS BEEN SUBMITTED ON THE  
9 12(B)(6) MOTION, AND THAT'S BEFORE THE COURT, AND THE COURT  
10 CAN MAKE THE DETERMINATION. THE --

11 **THE COURT:** IS THERE A SUMMARY JUDGMENT ISSUE TO END  
12 THIS CASE? THE ORDER THAT THEY PROVIDED A COPY OF WHICH TO ME  
13 IS DATED JULY 2013. HOW DID THE *CLEARY* CASE RESOLVE?

14 **MR. CHRISTIANSEN:** THE *CLEARY* CASE RESOLVED BY A  
15 DISMISSAL BY THE PLAINTIFF ON A STIPULATION.

16 THE COURT'S VERY FAMILIAR WITH WHAT'S BEEN SUBMITTED,  
17 OBVIOUSLY. THE QUESTION, THE FOCAL POINT IS WHETHER THIS WAS  
18 A DEBT THAT WAS IN DEFAULT AT THE TIME THAT IT WAS OBTAINED BY  
19 PURCO. AND THERE'S NO DISPUTE, BASED ON WHAT MR. BORISON HAS  
20 ALLEGED, AND THIS IS THE BASIS FOR OUR MOTION, THAT THE FIRST  
21 ATTEMPT TO MAKE ANY RECOVERY OF ANY AMOUNT OR TO QUANTIFY OR  
22 TO ASSERT ANY AMOUNT CAME FROM PURCO.

23 **THE COURT:** WELL, I HAVE THE MOTION, I HAVE THE  
24 OPPOSITION. I'M AWAITING A REPLY. WHY WAS THIS PUT ON  
25 CALENDAR FOR HEARING IN MARCH?

1           **MR. CHRISTIANSEN:** YOUR HONOR, IT WAS PUT ON CALENDAR  
2           FOR HEARING IN MARCH BECAUSE WE ANTICIPATED SUBMITTING IN THE  
3           ALTERNATIVE A MOTION FOR SUMMARY JUDGMENT; AGAIN, THE VERY  
4           THING THAT THE *CLEARY* JUDGE HAD A CONCERN ABOUT.

5           WE WANTED TO MAKE SURE THAT THE COURT HAD BEFORE IT  
6           MATERIALS THAT IT NEEDED SO THAT WE CAN RESOLVE THIS RIGHT OUT  
7           OF THE CHUTES. BECAUSE THERE -- ONCE THE COURT SEES THIS LAID  
8           OUT, THE COURT WILL SEE THAT THERE SIMPLY WASN'T A DEBT IN  
9           DEFAULT THAT WE'RE TALKING ABOUT HERE.

10          **THE COURT:** WELL, HOW DO YOU GET TO SUMMARY JUDGMENT  
11          IF YOU HAVEN'T RESPONDED TO THE COMPLAINT? IF YOU HAVEN'T  
12          ANSWERED?

13          **MR. CHRISTIANSEN:** WE THINK BECAUSE THE RELEVANT  
14          COMMUNICATIONS WERE BETWEEN THE PLAINTIFF DIRECTLY, WHO BY THE  
15          WAY IS A CONSUMER PROTECTION PLAINTIFFS' ATTORNEY, BETWEEN HIM  
16          AND PURCO THAT WE CAN TAKE FACTS THAT AREN'T IN DISPUTE  
17          BECAUSE THOSE WERE THE ONLY TWO PARTIES INVOLVED, PUT THOSE  
18          BEFORE THE COURT IN THE ALTERNATIVE TO THE 12(B)(6).

19          **THE COURT:** ALL RIGHT. WELL, ARGUE THE MOTION.  
20          ANYTHING TO ADD TO YOUR PAPERS?

21          **MR. NATHAN:** NO. EVERYTHING IS IN OUR PAPERS.

22          **THE COURT:** YOU WANT TO -- I KNOW I'M EXPECTING YOUR  
23          REPLY, BUT YOU MAY NOT GET ANY ORAL ARGUMENT ON THIS.

24          DO YOU WANT TO ADD ANYTHING ORALLY?

25          **MR. CHRISTIANSEN:** WHAT I WOULD SAY, YOUR HONOR, IS

1 THIS: A DEBT CANNOT BE IN DEFAULT IF IT'S NEVER BEEN  
2 ASSERTED. SO PURCO, IN THE VERY FIRST INSTANCE, AS ALLEGED BY  
3 THE PLAINTIFF, ASSERTED THE AMOUNT THAT WAS OWED IN THE LETTER  
4 THAT IS ALLEGED TO BE THE PROBLEM.

5 AND SO THE CASE LAW SAYS THAT THERE HAS TO BE AT LEAST  
6 SOME TIME PASS FROM THE TIME THAT A DEBT IS FIRST ASSERTED  
7 BEFORE IT CAN BE IN DEFAULT. NOW, THAT CAN VARY FROM CASE TO  
8 CASE, BUT YOU ARE NOT IN DEFAULT AT THE END OF A CONTRACT  
9 PERIOD WHEN YOU ARE TALKING ABOUT DAMAGES TO A CAR.

10 THE DAMAGES HAVE TO SOMEHOW BE QUANTIFIED AND THEY SOMEHOW  
11 HAVE TO BE ASSERTED OR ALLEGED OR BILLED IN THIS CASE OR  
12 DEMANDED OF THE CONSUMER BEFORE IT COULD EVER BE IN DEFAULT.  
13 AND THAT'S ALLEGED TO BE FROM PURCO IN THE VERY FIRST  
14 INSTANCE. SO YOU SIMPLY DON'T HAVE A DEBT THAT'S IN DEFAULT  
15 PERIOD.

16 **THE COURT:** RESPONSE?

17 **MR. NATHAN:** THAT'S ABSURD. YOU WOULDN'T ATTEMPT TO  
18 COLLECT ON SOMETHING THAT'S NOT OWED TO YOU.

19 **THE COURT:** THERE'S A DIFFERENCE BETWEEN OWING A DEBT  
20 AND BEING IN DEFAULT, ISN'T THERE? THE WORD "DEFAULT" HAS  
21 SOME KIND OF MEANING, DOESN'T IT?

22 **MR. NATHAN:** YES. THAT'S WHY HIS CLIENT WAS HIRED BY  
23 ALAMO. IT WAS BECAUSE THE DEBT WAS IN DEFAULT. THE CAR WAS  
24 RETURNED --

25 **THE COURT:** I DON'T REMEMBER SEEING ANY

1 CORRESPONDENCE FROM HERTZ TO YOUR CLIENT.

2 **MR. NATHAN:** NO. BECAUSE THEY EVENTUALLY TURNED IT  
3 OVER --

4 **THE COURT:** EVENTUALLY; WASN'T THIS WITHIN A COUPLE  
5 OF MONTHS OF HAVING --

6 **MR. NATHAN:** YES.

7 **THE COURT:** -- RENTED THE CAR?

8 **MR. NATHAN:** YES. AND WHEN THE CAR IS RETURNED IS  
9 WHEN YOU PAY FOR WHAT YOU OWE FOR THE DEBT.

10 WHEN YOU RENT A CAR, YOU PUT YOUR CREDIT CARD DOWN. WHEN  
11 YOU RETURN THE CAR, YOU PAY WHAT YOU OWE ON IT. ANYTHING UP  
12 AND OVER THAT IS A DEBT. AND THEY ARE CLAIMING THAT SOMETHING  
13 WAS DAMAGED. AND THEY ATTEMPTED TO COLLECT -- THEY HIRED  
14 PURCO TO ATTEMPT TO COLLECT ON IT.

15 WHAT THE DEFENSE IS BASICALLY ASSERTING IS MR. BORISON  
16 WOULD NEVER IN ANY CHANCE OF THE WORLD HAVE ANY RECOURSE FOR  
17 THEIR ACTIONS. AND IT'S ABSURD. THEY HAVE NEVER BEEN ABLE TO  
18 PULL THIS OFF IN ANY OTHER COURT, AND THEY'RE JUST RECYCLING  
19 THE SAME EXACT MOTION THEY HAVE FILED BEFORE.

20 **THE COURT:** DO YOU HAVE SOME OTHER ORDER THAT'S MORE  
21 DISPOSITIVE THAN THE ONE THAT YOU ATTACHED, THIS *CLEARY* ONE?

22 **MR. NATHAN:** NO, BECAUSE THAT'S WHAT I COULD FIND IN  
23 MY --

24 **THE COURT:** IF THEY KEEP RECYCLING THEM, HOW IS IT  
25 THAT SOME COURT HASN'T RULED ON THIS IN YOUR FAVOR?



1           **MR. NATHAN:** I WANT TO KNOW WHY -- HOW -- IS THERE  
2 ANY COURT THAT'S EVER FOUND THAT THEY ARE NOT SUBJECT TO THE  
3 FDCPA, AND THEY CAN'T PRODUCE ANYTHING LIKE THAT.

4           **MR. CHRISTIANSEN:** YES, WE HAVE. AND WE SUBMITTED  
5 THAT TO THE COURT. THAT'S THE *PURCO* CASE OUT OF THE COLORADO  
6 COURT OF APPEALS THAT SPECIFICALLY HELD THAT UNDER THE  
7 COLORADO FAIR DEBT COLLECTION PRACTICES ACT, WHICH HAD THE  
8 EXACT SAME LANGUAGE AND THE EXACT SAME STANDARD.

9           AND BACK TO THE ORIGINAL QUESTION THAT WAS POSED TO  
10 PLAINTIFF'S COUNSEL, THERE ISN'T ANY ALLEGATION AND THERE  
11 COULDN'T BE ONE MADE IN GOOD FAITH OR UNDER RULE 11 THAT  
12 SOMEHOW HERTZ -- IT'S NOT HERTZ, I'M SORRY, ALAMO NATIONAL  
13 DEMANDED OR REQUIRED PAYMENT AT THE END OF THE CONTRACT. IT'S  
14 SIMPLY NOT TRUE.

15           ALL OF THOSE THINGS WERE HANDLED BY PURCO. PURCO MADE THE  
16 VERY FIRST BILL, THE VERY FIRST ASSERTION OF ANY AMOUNT. AND  
17 THAT'S WHAT'S ALLEGED IN THE COMPLAINT BECAUSE THAT'S TRUE.

18           **MR. NATHAN:** YOUR HONOR, MAY I JUST MENTION. THE  
19 *KOENIG* CASE, THE DEFENSE KEEPS MISCHARACTERIZING THAT CASE.

20           THAT WAS A CASE THAT THE COURT IN THAT CASE DID NOT HOLD  
21 WHETHER OR NOT PURCO WAS SUBJECT TO THE FDCPA. IT JUST SAID  
22 IT DIDN'T NEED A LICENSE IN COLORADO. IT DIDN'T SAY THAT  
23 FDCPA APPLIES OR DOES NOT APPLY.

24           THAT CASE WAS A BIG WIN FOR CONSUMERS. SO I DON'T  
25 UNDERSTAND. THEY KEEP CITING THIS CASE. IT DOESN'T APPLY

1 HERE EXCEPT TO SHOW THAT -- IT ALSO SAID THAT THEY ACTUALLY --  
2 THE FEES THEY ARE TRYING TO COLLECT IN THIS CASE THEY ARE NOT  
3 PERMITTED TO DO. THEY ARE NOT PERMITTED TO COLLECT THOSE  
4 FEES.

5 **THE COURT:** ALL RIGHT. TRIAL DATE, IN MY VIEW, HALF  
6 A DAY. THIS IS A BENCH TRIAL.

7 **MR. NATHAN:** WE REQUESTED A JURY, YOUR HONOR.

8 **THE COURT:** ARE YOU ENTITLED TO A JURY?

9 **MR. NATHAN:** YEAH. I DON'T SEE WHY WE WOULDN'T BE.

10 **THE COURT:** WELL, I'M NOT GIVING YOU A LOT OF JURY  
11 TIME. THAT'S FOR SURE.

12 YOU WILL BE GIVEN A TRIAL DATE WITHIN -- I WILL GIVE YOU  
13 30 DAYS' NOTICE. I WILL SQUEEZE YOU IN SOMEWHERE.

14 YOU GET FOUR MONTHS OF DISCOVERY. DISCOVERY CLOSES ON  
15 MARCH 31ST. IF YOU DON'T WIN ON THE 12(B)(6), I WOULD SUGGEST  
16 YOU MOVE QUICKLY.

17 YOU ARE ORDERED TO OUR COURT ADR PROGRAM. DEFAULT IS 90  
18 DAYS.

19 THANK YOU.

20 **MR. CHRISTIANSEN:** THANK YOU, YOUR HONOR.

21 **MR. NATHAN:** THANK YOU, YOUR HONOR.

22 (PROCEEDINGS CONCLUDED AT 3:05 P.M.)  
23  
24  
25

CERTIFICATE OF REPORTER

I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE  
UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY  
CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink, reading "Diane E. Skillman", written over a horizontal line.

DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

FRIDAY, JANUARY 15, 2016

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